

## RENEWED NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

#### Perfluorooctanoic Acid in Makeup Foundation and Concealer

December 23, 2020

This Renewed Notice of Violation (the “Notice”) is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d). This Notice renews, in part, the Notice of Violation previously issued on April 23, 2019 (Attorney General No. 2019-00771).

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached summary provided by the California EPA (copies not provided to public enforcement agencies).
- This Notice is provided by the Center for Environmental Health (“CEH”), 2201 Broadway, Suite 508, Oakland, CA 94612, (510) 655-3900. CEH is a nonprofit corporation dedicated to protecting the environment, improving human health and supporting environmentally sound practices. Kaya Sugerman is the Illegal Toxic Threats Program Director and a responsible individual within CEH.

#### Description of Violation:

- Violators: The names and addresses of the violators are identified on the attached Exhibit 1.
- Time Period of Exposure: The violations have been occurring since at least November 10, 2018, and are continuing to this day.
- Provision of Proposition 65: This Notice covers the “warning provision” of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemical(s) Involved: The name of the listed chemical involved in these violations is perfluorooctanoic acid (“PFOA”). Exposures to PFOA occur from the use of the products identified in this Notice.
- Type of Product: The specific type of product causing these violations is makeup foundation and concealer. Non-exclusive examples of this specific type of product are identified on the attached Exhibit 1. Further limitations, if any, on the specific products subject to this Notice for each individual violator are also identified on Exhibit 1.
- Description of Exposure: This Notice addresses consumer exposures to PFOA. Use of the products identified in this Notice results in human exposures to PFOA. The routes of exposure for the violations are dermal absorption directly through

the skin when consumers touch the products or apply them to the body, and ingestion via hand-to-mouth contact after consumers touch or handle the products. No clear and reasonable Proposition 65 warning is provided with these products regarding the presence of PFOA in the products.

**Resolution of Noticed Claims:**

Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against each alleged violator unless such violator agrees in a binding written instrument to: (1) recall products already sold or otherwise provided to consumers; (2) provide clear and reasonable warnings for products sold or otherwise provided to consumers in the future or reformulate such products to eliminate the PFOA exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If any alleged violator is interested in resolving this dispute without resort to expensive and time-consuming litigation, please feel free to contact CEH through its counsel identified below. It should be noted that CEH cannot: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received CEH's 60-day Notice. Therefore, while reaching an agreement with CEH will resolve its claims, such agreement may not satisfy the public prosecutors.

**Preservation of Relevant Evidence:**

This Notice also serves as a demand that each alleged violator preserve and maintain all relevant evidence, including all electronic documents and data, pending resolution of this matter. Such relevant evidence includes but is not limited to all documents relating to the presence or potential presence of PFOA in the products; purchase, sales and usage information for such products; efforts to comply with Proposition 65 with respect to such products; communications with any person relating to the presence or potential presence of PFOA in such products; and representative exemplars of any such products provided to customers or consumers by the alleged violator since November 10, 2018, through the date of any trial of the claims alleged in this Notice.

Please direct any inquiries regarding this Notice to CEH's counsel Howard J. Hirsch at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800, hhirsch at lexlawgroup.com.

**EXHIBIT 1**  
**December 23, 2020 Renewed Notice of Violation**  
**Perfluorooctanoic Acid in Makeup Foundation and Concealer**

<b>Names and Addresses of Responsible Parties</b>	<b>Further Limitation on Products Sold by Violators</b>	<b>Non-Exclusive Examples of the Products</b>
<p><b>Clinique Laboratories, LLC</b>            767 Fifth Avenue            New York, NY 10153</p>	n/a	<p>Clinique Superbalanced Makeup            in Cream Chamois CN 40            UPC No.            0-20714-14962-8</p>
<p><b>The Estée Lauder Companies Inc.</b>            767 Fifth Avenue            New York, NY 10153</p> <p><b>Estée Lauder Inc.</b>            7 Corporate Center Drive            Melville, NY 11747</p>	n/a	<p>Clinique Superbalanced Makeup            in Cream Chamois CN 40            UPC No.            0-20714-14962-8</p>
		<p>MAC Mineralize Concealer            in NC42            UPC No.            7-73602-24043-2</p>
<p><b>Make-Up Art Cosmetics Inc.</b>            767 Fifth Avenue            New York, NY 10153</p> <p><b>Make-Up Art Cosmetics (U.S.), Inc.</b>            767 Fifth Avenue            New York, NY 10153</p>	n/a	<p>MAC Mineralize Concealer            in NC42            UPC No.            7-73602-24043-2</p>
<p><b>Ulta Beauty, Inc.</b>            1000 Remington Blvd., Ste. 120            Bolingbrook, IL 60440</p> <p><b>Ulta Salon, Cosmetics &amp; Fragrance, Inc.</b>            1000 Remington Blvd., Ste. 120            Bolingbrook, IL 60440</p>	<p>Sold by            The Estée Lauder            Companies Inc., Estee            Lauder Inc., or Clinique            Laboratories, LLC</p>	<p>Clinique Superbalanced Makeup            in Cream Chamois CN 42            UPC No.            0-20714-14962-8</p>

**CERTIFICATE OF MERIT**  
**Health & Safety Code §25249.7(d)**

I, Howard J. Hirsch, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties identified in the notice have violated Health & Safety Code §25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney with the Lexington Law Group, and I represent the noticing party, the Center for Environmental Health.

3. Members of my firm and I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies or other data regarding the exposures to the listed chemical that is the subject of the action.

4. Based on the information obtained through those consultations, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and the information did not prove that the alleged violators will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of the Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies or other data reviewed by those persons.

December 23, 2020

  
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Howard J. Hirsch  
Attorney for CENTER FOR  
ENVIRONMENTAL HEALTH

1 **PROOF OF SERVICE**

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3 I, Owen Sutter, declare:

4 I am a citizen of the United States and employed in the County of San Francisco, State of  
5 California. I am over the age of eighteen (18) years and not a party to this action. My business  
6 address is 503 Divisadero Street, San Francisco, CA 94117 and my email address is  
osutter@lexlawgroup.com.

7 On December 23, 2020 I served the following document(s) on all interested parties in this  
8 action by placing a true copy thereof in the manner and at the addresses indicated below:

9 **NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND  
10 TOXIC ENFORCEMENT ACT;**

11 **CERTIFICATE OF MERIT;** and

12 **THE SAFE DRINKING AND TOXIC ENFORCEMENT ACT OF 1986  
13 (PROPOSITION 65): A SUMMARY** (only sent to those on service list marked with an  
14 asterisk).

15  **BY MAIL:** I am readily familiar with the firm's practice for collecting and processing mail  
16 with the United States Postal Service ("USPS"). Under that practice, mail would be deposited  
17 with USPS that same day with postage thereon fully prepaid at San Francisco, California in the  
18 ordinary course of business. On this date, I placed sealed envelopes containing the above  
19 mentioned documents for collection and mailing following my firm's ordinary business practices.

20 *Please see attached service list.*

21  **BY FACSIMILE:** I caused all pages of the document(s) listed above to be transmitted via  
22 facsimile to the fax number(s) as indicated and said transmission was reported as complete and  
23 without error.

24  **BY ELECTRONIC MAIL:** I transmitted a PDF version of the document(s) listed above via  
25 email to the email address(es) indicated on the attached service list [or noted above] before 5 p.m.

26 on the date executed.  
27 Stacey Grassini, Deputy District Attorney  
28 Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
sgrassini@contracostada.org

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70 West Hedding Street, West Wing  
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Napa County  
1127 First Street, Suite C  
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CEPD@countyofnapa.org

<p>1 Stephan R. Passalacqua, District Attorney          Sonoma County          2 600 Administration Drive, Rm. 212J          Santa Rosa, CA 95403          3 jbarnes@sonoma-county.org</p> <p>4 Phillip J. Cline, District Attorney          Tulare County          5 221 S. Mooney Avenue, Rm. 224          Visalia, CA 93291          6 Prop65@co.tulare.ca.us</p> <p>7 Paul E. Zellerbach, District Attorney          Riverside County          8 4075 Main Street          Riverside, CA 92501          9 Prop65@rivcoda.org</p> <p>10 Jeff W. Reisig, District Attorney          Yolo County          11 301 Second Street          Woodland, CA 95695          12 cfepd@yolocounty.org</p> <p>13 Dije Ndreu, Deputy District Attorney          Monterey County          14 1200 Aguajito Road          Monterey, CA 93940          15 Prop65DA@co.monterey.ca.us</p> <p>16 Tori Verber Salazar, District Attorney          San Joaquin County          17 222 E. Weber Avenue, Room 202          Stockton, CA 95202          18 DAConsumer.Environmental@sjcda.org</p> <p>19 Christopher Dalbey, Deputy District          Attorney, Santa Barbara County          20 1112 Santa Barbara Street          Santa Barbara, CA 93101          21 DAProp65@co.santa-barbara.ca.us</p> <p>22 San Francisco City Attorney's Office          City Hall, Room 234          23 1 Dr. Carlton B. Goodlett Place          Valerie.lopez@sfcityatty.org          24 San Francisco, CA 94102</p> <p>25          26          27          28</p>	<p>Mara W. Elliott, City Attorney          City of San Diego          1200 Third Ave, Suite 700          San Diego, CA 92101          CityAttyCrimProp65@sandiego.gov</p> <p>Gregory D. Totten, District Attorney          Ventura County          800 South Victoria Avenue          Ventura, CA 93009          daspecialops@ventura.org</p> <p>Gregory Alker, Assistant District Attorney          San Francisco County          732 Brannan Street          San Francisco, CA 94103          gregory.alker@sfgov.org</p> <p>Anne Marie Schubert, District Attorney          Sacramento Country          901 G Street          Sacramento, CA 95814          Prop65@sacda.org</p> <p>Eric J. Dobroth, Deputy District Attorney          San Luis Obispo County          County Government Center Annex, 4th          Floor          San Luis Obispo, CA 93408          edobroth@co.slo.ca.us</p> <p>Jeffrey S. Rosell, District Attorney          Santa Cruz County          701 Ocean Street          Santa Cruz, CA 95060          Prop65DA@santacruzcounty.us</p> <p>Nancy O'Malley, District Attorney          Alameda County          7776 Oakport Street, Suite 650          Oakland, CA 94621          CEPDProp65@acgov.org</p> <p>Office of the District Attorney          Calaveras County          891 Mountain Ranch Road          San Andreas, CA 95249          Prop65Env@co.calaveras.ca.us</p>
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1  **BY PERSONAL DELIVERY:** I placed all pages of the document(s) listed above in a sealed  
2 envelope addressed to the party(ies) listed above, and caused such envelope to be delivered by  
hand to the addressee(s) as indicated.

3  **BY OVERNIGHT DELIVERY:** I deposited such document(s) in a box or other facility  
4 regularly maintained by FedEx, or delivered such document(s) to a courier or driver authorized by  
FedEx, with delivery fees paid or provided for, and addressed to the person(s) being served.

5 I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.

6 Executed on December 23, 2020 at San Francisco, California.

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Owen Sutter

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## SERVICE LIST

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California Attorney General's Office  
Attention: Proposition 65 Coordinator and  
Robert Thomas  
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